IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2570 OF 2007

Shri Ramdas Kondaji Thackeray. ... Applicant.

V/s.

1. The State of Maharashtra.

2. Ramesh Baburao Bharvirkar. ... Respondents.

S.K.Shinde i/b. Sagar Kasar for the applicant.

Ms.S.D.Shinde, A.P.P. for respondent No.1- State.

Ms.Smita Gaidhani for respondent No.2.

CORAM: V.C.DAGA, J.

DATED: 23rd October 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for State. Perused application for pre-arrest bail.

2. The applicant is seeking bail in C.R.No.244/2005 registered with the Bhadrakali Police Station, district- Nashik for the offences punishable under sections 420, 465, 467, 468, 471, 511 read with section 34 of the Indian Penal Code.

The Facts :

3. The applicant has moved this application after suffering an adverse order dated 30th July, 2007 at the hands of the Ad-hoc Additional Sessions Judge-1 Nashik in Criminal Misc. Application No.705/2007, whereby prayer for anticipatory bail came to rejected.

4. The brief facts are that the applicant, resident of CIDCO, Nashik, is an advocate practising on both civil as well as criminal sides.

5. The complainant, Ramesh Bharvirkar is the owner of the landed property situated at village-Vadala, district- Nashik bearing Survey No.21/1. One Mangesh Ganore intended to purchase that land. He tried to contact the complainant on phone to negotiate the deal. At the relevant time, complainant was in America with his son. His wife talked to the intending purchaser Mr.Ganore on phone and informed him that there is no move to sell their land. Mr.Ganore informed her about the approach made to him by one Alfred John Jadhav and Mr.Ambadas Bodhale, both resident of Nashik, projecting them as Power of Attorney holders and duly authorised attorney of the complainant. The wife of the complainant informed the complainant about phone call and information received by her from Shri Ganore. The complainant instructed

one of his relatives to publish public notice in daily news papers "Lokmat" and "Gavkari" intimating public at large not to deal with anybody muchless with Mr.Alfred Jadhav and/or Mr.Ambadas Bodhale. Accordingly, public notices were published on 12th August, 2005.

6. The Complainant, who is the actual and real owner of the property, ultimately, returned to India and came to know that forged power of attorney; affidavit and agreement to sale, carrying his forge signatures, were prepared by the accused persons, and the present applicant has put his signature certifying identification of the executant as owner of the land, namely Ramesh Bharvirkar, the present complainant. The complainant has denied his signatures on the general power of attorney and agreement to sale (Isarpavati). He, after acquiring knowledge of this transaction, filed complaint. Some accused persons were arrested and released on bail. The prosecution has not yet filed chargesheet since investigation is incomplete.

7. The applicant, a practising advocate, has identified the executant in the affidavit and

agreement to sale stating that he knows the executant. Crime is registered on the complaint of the complainant. The applicant apprehending his arrest has moved this application to seek anticipatory bail.

Rival Submissions :

8. Mr.Shinde, learned counsel for the applicant has urged that identification of the executant in the affidavit or agreement to sale presented before the Notary Public does not mean that the applicant was associated in forging the power of attorney or affidavit or agreement to sale. According to him, identification of a wrong person by an advocate saying that executant is known to him *per se* is not an offence of conspiracy unless it is evidenced by some antecedent behaviour showing some concern or connection between the advocate and the principal accused. Mr.Shinde, thus, submits that there is nothing on record to show that the applicant had conspired with the main accused. He, in support of his submissions, placed reliance on the judgment of the Apex Court **Hiralal Jain v. Delhi Administration**, AIR 1972 SC 2598 = 1973 Cri.L.J. 47. Mr.Shinde, thus, prayed for grant of bail in favour of the applicant.

9. Per contra, prosecution has filed counter affidavit of Police Inspector (I.O.) Mr. Krishnarao Vishwanath Jadhav, dated 9th August, 2007, to oppose this application for anticipatory bail.

10. The prosecution has relied upon the statements of complainant, Notary Public, and one Mr.Suresh Namdeo Ayer as also the statements of co-accused, viz., Ambadas Sitaram Gotekar, Advocate Nazir Khatir and Namdeo Runjaji Hire to show involvement of the present applicant in commission of the offence.

11. The learned A.P.P., appearing for the State, submits that there is sufficient material on record which can be corroborated by the statement of the co-accused. She further submits that the government valuation of the land involved in the commission of crime is to the tune of Rs.2,22,00,000/- and from the documents it appears that advance amount of Rs.51,000/- was already paid to the accused persons. She further submits that the applicant is an Advocate of more than 10 years standing. Therefore, prima facie; it cannot be said that the act of the applicant was an innocent act, though, in her

submission, matter needs thorough investigation. She further submits that if the person engaged in the legal profession starts manufacturing documents and helping the citizens to commit crime, then it is all the more serious matter which cannot be overlooked by this Court. She, thus, submits that this Court should not take any lenient view in the matter; merely because the applicant- accused happened to be one of the leading advocates of the Nashik city.

12. The complainant Ramesh Bharvirkar has also filed his affidavit and appeared through his advocate to oppose this application. He has brought on record one document (Exh.2) on which the present applicant has signed as Sub-Registrar, Nashik-2 to demonstrate that the applicant is in the habit of forging such documents. When this document was noticed by this Court, learned counsel for the applicant was called upon to explain under what circumstances the applicant had signed on the document as Sub-Registrar, Nashik-2. Accordingly, time was granted. However, no explanation from his side has come before this Court except to seek adjournment saying time is needed to find out details of the subject document. Prayer for adjournment, not being bonafide, was rejected.

13. The learned counsel for the complainant, on being asked, tried to correlate Exh.2, the documents produced on record, on which the Applicant has signed as Sub-Registrar, Nashik-2, with that of one Gift Deed executed by some of the members of the Bharvirkar family to which complainant belongs. According to the learned counsel for the complainant, this evidence, prima facie; shows acquaintance of the applicant with Bharvirkar family from which the present complainant comes. It is, thus, prayed that the application for pre-arrest bail be rejected.

Consideration :

14. Having heard rival parties, in my view, there is sufficient material available on record to connect the present applicant with the offence alleged which needs thorough investigation. The Apex Court in the case of **C.B.I. v. Anil Sharma**, 1997 (7) SCC 187, ruled that custodial interrogation is more elicitation oriented than questioning a suspect who is well protected under the umbrella of section 438 of Cr.P.C. The applicant being an advocate, possibility of he pressurising the witnesses or tampering with the evidence or refusing to co-operate with I.O. cannot

be ruled out.

15. It has become necessary to arrest growing tendency amongst the lawyers to prepare false evidence and/or false or fabricated documents and lending their signatures to attach credence to them. Hence such fact or omission needs to be viewed seriously. Advocates are expected to act as protectors of the society rather than becoming part of the scheme to commit economic offences. Grant of pre-arrest bail will give a wrong message to the society that the persons in the legal profession get protection from the Court. Message must go to the society that nobody is above Law. In the case of **Kartar Singh v. State of Punjab,** 1994 (3) SCC 569, the Apex Court in para-351 (of SCC) of the report stated:

> "No doubt, liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not loose faith in the system of judicial administration and indulge in private retribution."

16. The reliance placed on the Apex Court judgment

in the case of **Hiralal Jain** (supra) by Mr.Shinde, in the facts and circumstances of this case, is misplaced. It can be distinguished on facts. In that case there was no prima facie evidence to show that the claimants were not real persons, whereas in the present case, not only prima facie but concrete material is available on record to suggest acquaintance of the applicant- accused with the Bharvirkar family for whom he has acted as an advocate while presenting document of gift-deed for registration on 26th June, 2003, before Sub-Registrar, Nashik-2, the receipt of which is placed on record by the complainant as Exh.2.

17. The act of identification of the executant of the documents such as affidavit and power of attorney and agreement to sale has also misled the Notary Public, who appears to have notarised the document relying upon the identification done by the applicant-accused. Thus, considering cascading effect of the act of the applicant- accused and gravity thereof, he is not entitled to pre-arrest bail. Application for anticipatory bail is, thus, liable to be rejected.

18. In the result, application is rejected.

JUDGE